

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 3:22-cr-00327
v.	)	
	)	
	)	
[1] CHESTER GALLAGHER	)	
[2] HEATHER IDONI	)	
[3] CALVIN ZASTROW	)	
[4] COLEMAN BOYD	)	
[6] PAUL VAUGHN	)	
[7] DENNIS GREEN	)	

**Government's Motion to Manually File a Compact Disc**

Comes now the United States of America, by and through undersigned counsel, and moves this Court for permission to manually file a compact disc containing the clips that the United States intends to introduce into evidence at trial.

As background, on the afternoon of Friday, December 22, defense counsel emailed the Government requesting its position on a proposed defense motion to manually file exhibits. On the morning of December 26, the Government emailed back requesting clarification on whether the motion was just seeking leave to manually file or would contain something substantive. That email explained clearly that the Government would not oppose a simple motion to manually file but would want to see any motion containing substance. On the afternoon of December 26, defense counsel clarified that it would just be a motion to manually file. That evening, the Government emailed back that it had no objection. The following day, defense counsel filed their Motion Requesting Leave to Manually File Audio/Visual Recordings Relevant to Objections and Pretrial Issues (D.E. 410) and styled it in ECF as "unopposed." Yet the motion was not just a motion for

leave to file a physical exhibit. Instead, the filing contained four numbered paragraphs of substantive assertions that were unnecessary to the motion, that the Government would have opposed the inclusion of, and that the Government respectfully submits contained inaccurate information.

The Government provided the videos addressed in the defense motion to defense counsel with its initial discovery production in 2022. On November 28, 2023, the Government provided defense counsel with a list of beginning and ending time stamps for each clip the Government foresaw potentially using at trial and invited discussion of those clips. At that time, defense counsel was equipped with all the necessary information to offer rule of completeness arguments under Fed. R. Evid. 106 to the Government or to the Court, if necessary. While defense counsel represented in its motion that “the parties have attempted to resolve the video clip issue but have been unsuccessful” (D.E. 410 at \*2), the Government has not yet received a single request for any additions to the clip list.<sup>1</sup>

On December 29, the Government emailed defense counsel a more finalized list of 39 clips that the Government is likely to use at trial in its case-in-chief and made available CDs containing the clips and transcriptions. All 39 clips appeared on the Government’s original November 28 list. The Government again offered to discuss any contentions that a recording should be enlarged for

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<sup>1</sup> Any blanket claim by the defense that the entirety of the videos must be played is wholly unsupported by law. Fed. R. Evid. 106 does not do away with the fundamental rule that a defendant cannot elicit his or her own hearsay. *See, e.g., United States v. Kerley*, 784 F.3d 327, 342 (6th Cir. 2015). The defendants have offered no legal basis for them to be permitted to cross-examine the Government’s witnesses with the introduction of hours of video footage replete with inadmissible hearsay statements by the defendants and by others, the effect of which would be to improperly invite nullification by putting legally unsound arguments such as defense of others and obedience to higher authority before the jury.

additional context pursuant to Rule 106. The Government has not yet received any such request from the defense.

With this motion, the Government seeks leave to file a copy of this CD with the Court.

Respectfully submitted,

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**CERTIFICATE OF THE SERVICE**

I certify that a true and correct copy of the foregoing was filed electronically and served electronically, via the CM/ECF electronically filing system on this 2nd day of January 2024, upon the following:

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